

~~CONFIDENTIAL~~**ROUTING AND RECORD SHEET**

SUBJECT: (Optional)

Items of Information: Signed DoJ Views Letter and Information on  
State Laws on Polygraph

FROM:

Chief, Policy Branch/PPS/OS

EXTENSION

NO

DATE

18 April 1986

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. EO/OS

2. OS Registry

3. DD/PS

4. C/CG

5. C/CISG

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OCA 86-1236  
16 April 1986

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MEMORANDUM FOR: DC/ALD/OGC  
~~C/PB/PPG/OS~~  
C/SECOM  
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STAT

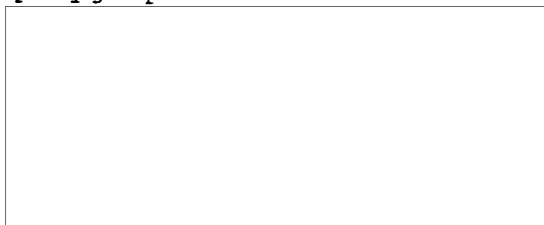
FROM:

Legislation Division  
Office of Congressional Affairs

SUBJECT: Items of Information: Signed DoJ Views Letter  
and Information on State Laws

1. After extensive deliberations, the Department of Justice obtained clearance to send to the Congress its views letter on S. 1815 and H.R. 1524 in which the Department opposed both bills. The letter arrived too late to be effective on the House side and, at this point, may not be effective on the Senate side either. A copy of the signed letter is attached.

2. Also attached for your general information is a compilation of state laws on polygraphs.



Attachments

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# POLYGRAPHS AND EMPLOYMENT

A BNA Special Report



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Extra copies of this report (Product Code 02-GERR-96) are \$30 each, and may be obtained from The Bureau of National Affairs, Inc., Distribution and Customer Service Center, 9401 Decoverly Hall Road, Rockville, MD 20850, (301) 258-1033, with the following quantity discounts available: 6-10 copies, 10%; 11-25 copies, 15%; 25-50 copies, 20%; 51-500 copies, 25%; 501-1,000 copies, 30%; and 1,000-2,000 copies, 35%.



## STATE LAWS: EMPLOYERS

*Polygraph use in employment situations has been left to the states to regulate in most instances. Following is a listing of state statutes compiled by GERR that specifically regulate employers' use of polygraphs.*

### Alaska

#### Alaska Stats. Title 23, §23.10.037

**Sec. 23.10.037. Lie-detector tests.** (a) A person either personally or through an agent or representative may not request or suggest to an employee of the person or to an applicant for employment by the person or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with policemen in its employ or with persons applying to be employed as policemen.

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

### California

#### Deerings Calif. Code — Labor, §432.2

**§432.2 Prohibition against employer requiring applicant or employee to take lie detector test, etc.; Inapplicability to governmental entities or agencies**

(a) No employer shall demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. The prohibition of this section does not apply to the federal government or any agency thereof or the state government or any agency or local subdivision thereof, including, but not limited to, counties, cities and counties, cities, districts, authorities, and agencies.

(b) No employer shall request any person to take such a test, or administer such a test, without first advising the person in writing at the time the test is to be administered of the rights guaranteed by this section.

#### Deering's Calif. Code — Public Officers & Employees, §3307

##### §3307 Polygraph examination

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to

the effect that the public safety officer refused to take a polygraph examination.

### Connecticut

#### Conn. Stats., Title 31, §31-51g

**§31-51g Use of polygraph prohibited, when. Penalties**

(a) For the purposes of this section "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test or question individuals for the purpose of determining truthfulness.

(b) (1) No person, firm, corporation, association or the state or any political subdivision thereof shall request or require any prospective employee or any employee to submit to, or take, a polygraph examination as a condition of obtaining employment or of continuing employment with such employer or dismiss or discipline in any manner an employee for failing, refusing or declining to submit to or take a polygraph examination.

(2) No employment agency, as defined in section 32-129, and no agent for an employer shall require any person to submit to, or take, a polygraph examination for any purposes whatsoever.

(c) Any person, firm, corporation or association which violates any provision of this section shall be fined not less than two hundred fifty dollars nor more than one thousand dollars for each violation.

(d) The provisions of this section shall not apply to persons to be employed by the state or any local government or any political subdivision thereof in any police department except for civilian employees within the department, but shall apply with respect to obtaining and maintaining employment of other persons by the state or any local government or political subdivision thereof.

### Delaware

#### Del. Code Ann., Title 19, §704

**§704. Polygraph, lie detector or similar test or examination prohibited as condition of employment or continuation of employment; definitions; jurisdiction; penalty; exclusion.**

(a) As used in this section, "person" includes any individual, corporation, partnership, firm, association and the State or any agency or political subdivision thereof.

(b) No person, nor any agent or representative of a person, shall require, request or suggest that any employee or prospective employee take or shall cause, directly or indirectly, any employee or prospective employee to take a polygraph, lie detector or similar

test or examination as a condition of employment or continuation of employment.

(c) Whoever violates this section shall be fined not more than \$500 or imprisoned for not more than 90 days, or both. The Superior Court shall have exclusive jurisdiction of offenses under this section.

(d) This section shall not apply to any polygraph, lie detector or similar test or examination administered by any law-enforcement agency in the performance of official duties.

(e) As used in this section, the term "lie detector" shall include, but shall not be limited to, any electro-mechanical device which records or analyzes vocally produced sound frequency variations associated with stress for the purpose of determining the truth of any oral statement.

#### *District of Columbia*

**D.C. Code, Title 36, Ch. 8, §§36-801 to 36-803**

##### **§36-801. Definitions.**

As used in this chapter, the term:

(1) "Employee" means any natural person who performs any labor for compensation, in whole or in part, in the District of Columbia; but does not include:

(A) Employees of any authority of the government of the United States other than the District of Columbia government;

(B) Employees of any foreign government; or

(C) Employees of any international organization defined in 22 USC §288.

(2) "Employer" means anyone who employs any natural person and who does business in the District of Columbia, but does not include any agency or authority of the federal government.

(3) "Hiring procedure" means any procedure or action in the District of Columbia used to find, or to select for employment, any person seeking employment, whether the procedure is used by a prospective employer with all persons seeking employment, or is used only selectively with such persons.

(4) "Lie detector test" means any polygraph, lie detector or other test which by any mechanical, electrical, chemical, or physiological means attempts to determine whether a person is telling the truth, or the truth to the best of the person's knowledge.

##### **§36-802 Use prohibited; Exceptions**

(a) No employer or prospective employer shall administer, accept or use the results of any lie detector test in connection with the employment, application or consideration of an individual, or have administered, inside the District of Columbia, any lie detector test to any employee, or, in or during any hiring procedure, to any person whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.

(b) The provisions of this section shall not apply to any criminal or internal disciplinary investigations conducted by the Metropolitan Police, the Fire Department and the Department of Corrections.

##### **§36-803 Invasion of privacy; contracts and arbitration decisions; criminal penalties and civil liability**

(a) Any administration of a lie detector test to any employee or person seeking employment, in violation of §36-802, shall be an unwarranted invasion of priva-

cy in the District of Columbia, and shall be compensable by damages for tortious injury.

(b) No contract or arbitration decision shall contain any provision in violation of §36-802.

(c) Any employer, who violates the provisions of §36-802, shall be guilty of a misdemeanor and subject to a fine of \$500, or 30 days in jail, or both, upon conviction.

(d) Any employer who violates the provisions of this chapter shall be civilly liable to the person whom he or she required to take a polygraph or similar examination, and the amount of damages shall be established by the court, plus reasonable attorney's fees. Remedies available under subsection (c) of this section and this subsection shall be deemed alternative or joint relief, and not subject to waiver by the exercise of the other.

#### *Hawaii*

**Hawaii Rev.Stats., Ch. 378, §§378-21, 378-22**

##### **Part II. Lie Detector Tests**

**§378-21 Unlawful.** It shall be unlawful for a private employer or his agent, or an agent of a public employer to require an employee to submit to a polygraph or lie detector test as a condition of employment or continued employment.

**§378-22 Penalty.** Any person who unlawfully requires an employee to submit to polygraph or lie detector tests shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### *Idaho*

**Idaho Code, Ch. 9, §§44-903, 44-904**

**§44-903 Polygraph tests prohibited.** — No person, firm, corporation or other business entity or representative thereof, shall require as a condition for employment or continuation of employment any person or employee to take a polygraph test or any form of a so-called lie detector test. A violation of this section shall constitute a misdemeanor.

**§44-904 Polygraph tests — Exclusions.** — The provisions of this act shall not apply to any law enforcement agency of the United States of America, the state of Idaho, or any political subdivision or governmental entity thereof.

#### *Maine*

**Maine Rev.Stats.Ann., Title 32, Ch. 85, §7166**

##### **§7166. Limitations on uses in employment**

1. **Preemployment screening.** No employer may, directly or indirectly, require, request or suggest that any applicant for employment submit to a polygraph examination as a condition of obtaining employment, or administer or cause to be administered to an applicant any such examination, or use or refer to the results of such an examination for hiring purposes. For purposes of this subsection, "employer" shall include an employment agency and "applicant" shall include any person seeking to use an employment agency's services.

2. **Current employees.** No employer may, directly or indirectly, require, request or suggest that any employee submit to a polygraph examination as a condition of employment, or administer or cause to be

## STATE LAWS: EMPLOYERS

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administered to any employee any such examination, or use or refer to the results of such an examination for employment purposes.

### 3. Exceptions.

A. This section shall not apply to employees of or applicants for employment with law enforcement agencies.

B. Nothing in subsection 2 shall prohibit either an employee from voluntarily requesting a polygraph examination in connection with his employment or an employer from using or referring to the results of any examination so requested, provided that the results of that examination may not be used against the employee by the employer for any purpose, that the employer shall give the employee a copy of this Act when the employee requests the examination, and that the examination is recorded or that a witness of the employee's choice is present during the examination, or both, as the employee requests.

### Maryland

Ann.Code Md., Article 100, §95

§95. Lie detector test as a condition of employment prohibited.

(a) *Definitions.* — (1) The following words have the meanings indicated.

(2) The term "*employer*" as used in this subtitle means every employer engaged in any business or enterprise in this State, including the government of the State of Maryland, or any county, incorporated city or town, or other municipal corporation.

(3) The term "*applicant for employment or prospective employment or any employee*" as used in this subtitle does not include:

(i) A law enforcement officer as defined in §727 of Article 27;

(ii) Any employee of any law enforcement agency of the State of Maryland, or any county, incorporated city or town, or other municipal corporation; or

(iii) A correctional officer of the Baltimore County Detention Center, the Baltimore City Jail or of the Charles County Detention Center.

(b) *Test prohibited; exemption* — An employer may not demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. The prohibition of this section does not apply to the federal government or any agency thereof.

(c) *Notice in application for employment* — All applications for employment shall contain the following notice:

"Under Maryland law an employer may not require or demand any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. Any employer who violates this provision is guilty of a misdemeanor and subject to a fine not to exceed \$100."

This notice shall be set out in bold faced upper case type and be separately acknowledged by the signature of the applicant.

(d) *Investigation upon written complaint.* — Upon written complaint by an applicant for employment of an alleged violation of this subtitle, the Commissioner of Labor and Industry may cause an investigation to be made as to the existence of the alleged violation.

(e) *Mediation and conciliation; injunctive or other relief* — If the Commissioner determines that a violation exists, he is authorized to endeavor to resolve any issue involved under said violation by informal methods of mediation and conciliation, or he may institute, on behalf of any aggrieved applicant for employment, action in any court of competent jurisdiction in the subdivision in which the violation occurred seeking injunctive relief or other relief including money damages, resulting from the violation under this subtitle.

(f) *Duty of Attorney General* — The Attorney General is authorized to prosecute all civil cases arising hereunder which are referred to him by the Commissioner for that purpose.

(g) *Penalty* — Any employer who violates the provisions of this subtitle is guilty of a misdemeanor and subject to a fine not to exceed \$100.

### Massachusetts

Mass. Ann. Laws, Ch. 149, §19B

§19B. Use of Lie Detector Tests by Employers Prohibited.

Any employer who subjects any person employed by him, or any person applying for employment, including any person applying for employment as a police officer, to a lie detector test, or requests, directly or indirectly, any such employee or applicant to take a lie detector test, shall be punished by a fine of not more than two hundred dollars. This section shall not apply to lie detector tests administered by law enforcement agencies as may be otherwise permitted in criminal investigations.

### Michigan

Mich. Comp. Laws Ann., §§37.201 to 37.209

#### 37.201 Short Title

Sec. 1. This act shall be known and may be cited as the "polygraph protection act of 1981."

#### 37.202 Definitions

Sec. 2. As used in this act:

(a) "Employee" means an individual who works for another person for compensation.

(b) "Employer" means a person who employs 1 or more persons or who accepts applications for employment, including an agent of an employer.

(c) "Employment agency" means a person regularly undertaking with or without compensation to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer, and includes an agent of that person.

(d) "Examiner" means any person who does any of the following:

(i) Purports to detect deception, verify truthfulness, or provide a diagnostic opinion of either of these through instrumentation or the use of a mechanical device.

(ii) Represents that he or she can or does offer the service of detecting deception, verifying truthfulness,

or providing a diagnostic opinion of either of these through instrumentation or the use of a mechanical device.

(iii) Uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these.

(e) "Person" means an individual, firm, partnership, association, corporation or other legal entity, this state or an agency of this state, or the federal government or an agency of the federal government.

(f) "Polygraph examination" means a psychological stress evaluator examination or any other procedure which involves the use of instrumentation or a mechanical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these; including a lie detector test, psychological stress evaluator examination, or similar test.

(g) "Psychological stress evaluator" means any mechanical device or instrument which purports to determine the truth or falsity of statements made by an employee or applicant for employment on the basis of vocal fluctuations or vocal stress.

(h) "Psychological stress evaluator examination" means any of the following:

(i) The questioning or interviewing of an employee or applicant for employment for the purpose of subjecting the statements of the employee or applicant for employment to analysis by a psychological stress evaluator.

(ii) The recording of statements made by an employee or applicant for employment for the purpose of subjecting those statements to analysis by a psychological stress evaluator.

(iii) The analysis of statements made by an employee or applicant for employment for the purpose of determining the truth or falsity of the statements by the use of a psychological stress evaluator.

**37.203. Polygraph examinations; requesting, requiring, and administering to employee or applicant prohibited; waiver of prohibited practice prohibited; voluntary polygraph examinations.**

Sec. 3. (1) Except as provided in this section, an employer or employment agency shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, do any of the following:

(a) Request or require that an employee or applicant for employment take or submit to a polygraph examination.

(b) Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.

(c) Require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this act or section 19 of Act No. 295 of the Public Acts of 1972, as amended, being section 338.1719 of the Michigan Compiled Laws.

(2) This section does not prohibit an employee or applicant for employment from voluntarily requesting a polygraph examination.

(3) If an employee or applicant requests a polygraph examination, this section does not prohibit an employer or employment agency from administering a polygraph examination as provided in subsection (7).

(4) An employee or applicant for employment who voluntarily requests a polygraph examination shall receive from the employer or employment agency a copy of this section and section 19 of Act No. 295 of the Public Acts of 1972, as amended, before the employee or applicant for employment voluntarily takes the polygraph examination.

(5) An employer shall not refuse to hire an applicant for employment because the applicant refuses or declines a polygraph examination.

(6) If an employee or applicant for employment voluntarily requests a polygraph examination, an employer or employment agency shall not use or employ the services of an intern or an examiner who is not licensed under Act No. 295 of the Public Acts of 1972, as amended, being sections 338.1701 to 338.1729 of the Michigan Compiled Laws, for the detection of deception, verification of truthfulness, or measuring or recording the presence or absence of stress in the vocal response of the employee or applicant for employment.

(7) If an employee or applicant for employment voluntarily requests a polygraph examination, the examiner shall:

(a) Not ask questions that are prohibited under section 19(j) of Act No. 295 of the Public Acts of 1972, as amended [Section 338.1719(j)].

(b) Inform the employee or applicant for employment of all specific question areas to be explored before their actual exploration during the examination.

(c) Inform the employee or applicant for employment of all of the following:

(i) The employee or applicant for employment has the right to accept or refuse the examination.

(ii) The employee or applicant for employment has the right to halt an examination in progress at any time.

(iii) The employee or applicant for employment is not required to answer any questions or give any information.

(iv) Any information the employee or applicant for employment volunteers could be used against the employee or applicant for employment, or made available to the employer, unless otherwise specified and agreed to in writing by the employee or applicant for employment.

(d) Provide the employee or applicant for employment with a copy of the examination results and all reports or analyses done by the examiner which are shared with the employer.

**37.204. Action against employee or applicant based on opinion of untruthfulness during examination prohibited.**

Sec. 4. An employer or employment agency shall not take any action against an employee or applicant for employment based upon an alleged or actual opin-

ion that the employee or applicant for employment did not tell the truth during a polygraph examination.

**37.205. Sharing of information which communicates results or refusal to take examination prohibited**

Sec. 5. An employer or employment agency shall not share with any other person information which communicates the results or analysis of an employee's or applicant's polygraph examination or the fact that an employee or applicant for employment refused to submit to a polygraph examination.

**37.206. Information obtained during examination, inadmissible in criminal proceeding.**

Sec. 6. Any information obtained from an employee or applicant for employment during a polygraph examination shall not be admissible in a criminal proceeding.

**37.207. Actions for injunctive relief or damages; damages.**

Sec. 7. (1) A person alleging a violation of this act may bring an action for injunctive relief or damages, or both.

(2) For purposes of this act, damages include damages for injury or loss caused by each violation of this act and reasonable attorney's fees.

(3) If an employee is discharged in violation of this act, damages for which the employer is liable under this section shall include double the wages lost.

**37.208. Violation; punishment.**

Sec. 8. A person who violates this act is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 90 days, or both.

**37.209 Contingent effect**

Sec. 9. This act shall not take effect unless the following House Bills of the 81st Legislature are enacted into law:

(a) House Bill No. 4403.

(b) House Bill No. 4404.

[Ed. Note: These two bills were enacted and approved March 17, 1982]

**Minnesota**

Minn.Rev. Code 1947, §§181.75, 181.76

**181.75. Polygraph tests of employees or prospective employees prohibited**

Subdivision 1. Prohibition, penalty. No employer or agent thereof shall directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. No person shall sell to or interpret for an employer or his agent a test that he knows has been solicited or required by an employer or his agent to test the honesty of an employee or prospective employee. An employer or agent or any person knowingly selling, administering, or interpreting tests in violation of this section is guilty of a misdemeanor. If an employee requests a polygraph test any employer or agent administering the test shall inform him that taking the test is voluntary.

Subd. 2. Investigations. The department of labor and industry shall investigate suspected violations of this section. The department may refer any evidence available concerning violations of this section to the county attorney of the appropriate county, who may

with or without such reference, institute the appropriate criminal proceedings under this section.

Subd. 3. Injunctive relief. In addition to the penalties provided by law for violation of this section, specifically and generally, whether or not injunctive relief is otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of this section and to require the payment of civil penalties. Whenever it shall appear to the satisfaction of the attorney general that this section has been or is being violated, he shall be entitled, on behalf of the state, to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging other penalties provided by law.

Subd. 4. Individual remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without a finding of illegality.

**181.76 Disclosure of lie detector tests prohibited**

No person shall disclose that another person has taken a polygraph or any test purporting to test honesty or the results of that test except to the individual tested. If such a test is given after August 1, 1973 and at the employee's request, the results may be given only to persons authorized by the employee to receive the results. A person who violates this section is guilty of a misdemeanor.

**Montana**

Mont.Code Ann. §39-2-304

**39-2-304. Lie detector tests prohibited — exception.**

(1) No person, firm, corporation, or other business entity or representative thereof shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

(2) This section shall not apply to public law enforcement agencies.

**New Jersey**

N.J.Stat.Ann., Ch. 40A, §2C:40A-1

**2C:40A-1. Employer requiring lie detector test**

Any person who as an employer shall influence, request or require an employee or prospective employee to take or submit to a lie detector test as a condition of employment or continued employment, commits a disorderly persons offense. The provisions of this section shall not apply if: (1) the employer is authorized to manufacture, distribute or dispense narcotics or controlled dangerous substances pursuant to the provisions of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970 c. 226 (C. 24:21-1 et seq.); (2) the employee or prospective employee is or will be directly involved in the manufacture, distribution, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances;



and (3) the test, which shall cover a period of time no greater than 5 years preceding the test, and except as provided in this section, shall be limited to the work of the employee or prospective employee and the individual's improper handling, use, or illegal sale of legally distributed controlled dangerous substances. The test may include standard baseline questions necessary and for the sole purpose of establishing a normal test pattern. Any employee or prospective employee who is required to take a lie detector test as a precondition of employment or continued employment shall have the right to be represented by legal counsel. A copy of the report containing the results of a lie detector test shall be in writing and be provided, upon request, to the individual who has taken the test. Information obtained from the test shall not be released to any other employer or person. The employee or prospective employee shall be informed of his right to present to the employer the results of an independently administered second lie detector examination prior to any personnel decision being made in his behalf by the employer.

#### **New York**

**N.Y. Consolidated Laws, Article 20-B, §§733 to 739**

#### **Article 20-B Psychological Stress Evaluators and Employment**

##### **§733. Definitions**

As used in this article:

1. "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state, or other business entity, which employs or seeks to employ an individual or individuals. All provisions of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

2. "Employee" means an individual employed by an employer.

3. "Prospective employee" means an individual seeking or being sought for employment with an employer.

4. "Psychological stress evaluator" means any mechanical device or instrument which purports to determine the truth or falsity of statements made by an employee or prospective employee on the basis of vocal fluctuations or vocal stress.

5. "Psychological stress evaluator examination" means:

(a) the questioning or interviewing of an employee or prospective employee for the purpose of subjecting the statements of such employee or prospective employee to analysis by a psychological stress evaluator;

(b) the recording of statements made by an employee or prospective employee for the purpose of subjecting such statements to analysis by a psychological stress evaluator; or

(c) analyzing, with a psychological stress evaluator, statements made by an employee or prospective employee for the purpose of determining the truth or falsity of such statements.

##### **§734. Practitioner limitations**

1. It shall be unlawful for any individual to knowingly administer or participate in the administration of a psychological stress evaluator examination of an employee or prospective employee as defined in section seven hundred thirty-three of this chapter.

2. Any individual violating any of the provisions of this section shall be guilty of a class B misdemeanor upon the first conviction and upon any subsequent convictions shall be guilty of a class A misdemeanor.

##### **§735. Employer limitations**

1. No employer or his agent shall require, request, suggest or knowingly permit any employee or prospective employee of such employer to submit to a psychological stress evaluator examination and no employer shall administer or utilize the results of such test within or without the state of New York for any reason whatsoever.

2. A violation of any of the provisions of this section shall be a class B misdemeanor upon the first conviction and upon any subsequent conviction shall be a class A misdemeanor.

##### **§736. Employee rights in related proceedings**

No employee shall be discharged, disciplined or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the provisions of this article. Any employee discriminated against in violation of the provisions of this section shall be compensated by his employer for double the amount of any loss of wages and benefits arising out of such discrimination and shall be restored to his previous position of employment.

##### **§737. Supplemental provisions**

No individual shall administer or participate in the administration of a psychological stress evaluator examination within the state to any individual seeking employment outside the state of New York or for the purpose of continuing employment outside the state of New York. Any individual violating the provisions of this section shall be guilty of a class B misdemeanor upon first conviction and upon any subsequent convictions shall be guilty of a class A misdemeanor.

##### **§738. Actions for damages**

Any employee or prospective employee damaged as a result of a violation of any of the provisions of this article shall be entitled to file an action for damages in the supreme court of this state.

##### **§739. Applicability of article**

This article shall only apply to employee and prospective employee-employer relations.

#### **Oregon**

**Ore.Rev.Stats., §§659.225, 659.227**

**659.225 Requiring breathalyzer or lie detector test prohibited; exception for breathalyzer test.** (1) No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employee to take a breathalyzer test, polygraph test or any other form of a so-called lie detector test. However, nothing in this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has

reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(2) For the purposes of this section, an individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

**659.227 Requiring breathalyzer, polygraph or psychological stress test prohibited; exceptions.** (1) It is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination or psychological stress test.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110 and 659.121.

(3) As used in this section:

(a) "Polygraph examination or psychological stress test" means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices.

(b) "Breathalyzer test" means a test to detect the presence of alcohol in the body through the use of instrumentation or mechanical devices.

(c) An individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

(4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to an individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal investigation conducted by a law enforcement agency, as defined in ORS 181.010, a district attorney or the Attorney General.

(5) Nothing in Subsection (1) of this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

## Pennsylvania

Pa.C.S.A., §7321

§7321. Lie Detector tests

(a) **Offense defined.** — A person is guilty of a misdemeanor of the second degree if he requires as a condition for employment or continuation of employment that an employee or other individual shall take a polygraph test or any form of a mechanical or electrical lie detector test.

(b) **Exception.** — The provisions of subsection (a) of this section shall not apply to employees or other individuals in the field of public law enforcement or who dispense or have access to narcotics or dangerous drugs.

## Rhode Island

G.L.R.I., Title 28, Ch. 6.1, §§28-6.1-1, 28-6.1-2

**28-6.1-1 Lie detector tests prohibited.** — No employer or agent of any employer shall require or subject any employee to any lie detector tests as a condition of employment or continued employment.

**28-6.1-2. Penalty for violations — Exception.** — Any employer who subjects any person employed by him, or any person applying for employment, to a lie detector test, or causes, directly or indirectly, any such employee or applicant to take a lie detector test, shall be punished by a fine of not more than two hundred dollars (\$200). This section shall not apply to lie detector tests administered by law enforcement agencies in the performance of their official duties.

## Vermont

Vermont Stats. Ann., Title 21, Chapter 5, Subchapter 5a  
§494. DEFINITIONS

As used in this subchapter:

(1) "Employer" means any individual, organization, or governmental body including partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, which has one or more individuals performing services for it within this state.

(2) "Employee" means every person who may be permitted, required or directed by any employer, in consideration of direct or indirect gain or profit, to perform services.

(3) "Prospective employee" means an individual seeking or being sought for employment with an employer.

(4) "Employment agency" means a person who undertakes, with or without compensation, to procure, refer, recruit or place for an employer or person, the opportunity to work for an employer.

(5) "Examiner" means any person licensed under chapter 53 of Title 23.

(6) "Polygraph examination" means any procedure which involves the use of instrumentation or a mechanical device to enable or assist the detection of deception, the verification of the truthfulness or the

rendering of a diagnostic opinion regarding either of these, and includes a lie detector or similar test.

#### **§494a. POLYGRAPH TESTING AS CONDITION OF EMPLOYMENT**

(a) Except as provided in section 494b, an employer or an employment agency shall not as a condition of employment, promotion, or change in status of employment or as an express or implied condition of a benefit or privilege of employment, do any of the following:

(1) request or require that an employee or applicant for employment take or submit to a polygraph examination; or

(2) administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment; or

(3) request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited under this subchapter.

(b) An employer shall not refuse to hire, promote, or change the status of employment of an applicant for employment because the applicant refuses or declines a polygraph examination.

#### **§494b. EMPLOYERS PERMITTED TO REQUIRE POLYGRAPH EXAMINATIONS**

The following employers may require that an applicant for employment take or submit to a polygraph examination, or administer or cause to be administered, a polygraph examination to an applicant for employment:

(1) the department of public safety, municipal police departments and county sheriffs, as to sworn police officers and deputy sheriffs;

(2) any employer whose primary business is the wholesale or retail sale of precious metals or gems and jewelry or items made from precious metals or gems;

(3) any employer whose business includes the manufacture or the wholesale or retail sale of regulated drugs as defined in section 4201 of Title 18, provided, however, that only employees who come in contact with such regulated drugs may be required to take a polygraph examination;

(4) any employer authorized or required under federal law or regulations to administer polygraph examinations.

#### **§494c. DUTIES OF EXAMINER**

(a) An examiner administering a polygraph examination under this subchapter shall:

(1) prior to the examination, provide the examinee with a copy of this subchapter and a copy of all questions to be asked during the examination which may be retained by the examinee. This does not preclude follow-up questions as long as the examiner gives the examinee a copy of the questions;

(2) inform the examinee as follows:

(A) the examinee has the right to accept or refuse the examination;

(B) the examinee has the right to halt an examination in progress at any time;

(C) the examinee is not required to answer any questions or give any information;

(D) any information the examinee volunteers could be used against the examinee, or made available to the employer, unless otherwise specified and agreed to in writing by the examinee; and

(E) provide the examinee with a copy of the examination results and all reports or analyses done by the examiner which are shared with the employer.

(b) During a polygraph examination, an examinee shall not be asked:

(1) any questions regarding the examinee's political, religious or labor union affiliations;

(2) questions regarding the examinee's sexual practices, social habits, or his or her marital relationship, unless the questions clearly relate to job performance;

(3) questions which are unrelated to job performance.

#### **§494d. EMPLOYEE RIGHTS IN RELATED PROCEEDINGS**

No employee shall be discharged, disciplined or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the provisions of this subchapter. An employee discriminated against in violation of the provisions of this section shall be compensated by his or her employer the amount of any loss of wages and benefits arising out of such discrimination and shall be restored to his or her previous position of employment.

#### **§494e. PENALTIES**

Any individual violating any of the provisions of this subchapter shall be fined not less than \$500.00, nor more than \$1,000.00 or imprisoned not more than six months, or both, and the penalty shall not be suspended.

#### **Washington**

Rev. Code Wash. Ann., §§49.44.120 to 49.44.140

#### **49.44.120. Requiring lie detector tests**

It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require directly or indirectly that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: *Provided*, That this section shall not apply to persons making initial application for employment with any law enforcement agency: *Provided further*, That this section shall not apply to either the initial applicant for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

#### **49.44.130. Requiring lie detector tests — Penalty**

(1) Any person violating the provisions of RCW 49.44.120 shall be guilty of a misdemeanor.

(2) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(3) Nothing in this section or RCW 49.44.120 may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under RCW 49.44.120 for purposes of any civil action or injunctive relief.

44.49.140 In a civil action alleging a violation of 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

### West Virginia

W.Va.Code, §§21-5-5a to 21-5-5d

#### §21-5-5a. Definitions.

As used in sections five-b, five-c and five-d [§§21-5-5b, 21-5-5c and 21-5-5d] of this article, unless the context clearly requires otherwise:

(1) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government; public benefit corporation, public authority or political subdivision of the State, or other business entity, which employs or seeks to employ an individual or individuals. All provisions of sections five-b, five-c and five-d [§§21-5-5b, 21-5-5c and 21-5-5d] of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

(2) "Employee" means an individual employed by an employer.

(3) "Polygraph" means an instrument which records permanently and simultaneously a subject's cardiovascular and respiratory patterns and may record other physiological changes pertinent to the detection of deception.

(4) "Prospective employee" means an individual seeking or being sought for employment with an employer.

#### §21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

No employer may require or request either directly or indirectly, that any employee or prospective employee of such employer submit to a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any such examination or test administered outside this State to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this State: Provided, that the provisions of this section shall not apply to employees of an employer authorized to manufacture, distribute or dispense the drugs to which article five [§30-5-1 et seq.], chapter thirty applies, excluding ordinary drugs as defined in

section twenty-one [§30-5-21], article five, chapter thirty: Provided, however, that the provisions of this section shall not apply to law enforcement agencies or to military forces of the State as defined by section one [§15-1-1], article one, chapter fifteen of the Code: Provided further, that the results of any such examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.

#### §21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.

(a) No person, firm or corporation shall administer a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness of an employee or prospective employee without holding a current valid license to do so as issued by the commissioner of labor. No test shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he:

(1) Is at least eighteen years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the commissioner of labor or under his supervision, to determine his competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the commissioner of labor in his sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The commissioner of labor may design and by procedural rule designate and thereafter administer any test he deems appropriate to those persons applying for a license to administer polygraph, lie detector or such similar test to employees or prospective employees. The test designed by the commissioner of labor shall be so designed as to ensure that the applicant is thoroughly familiar with the code of ethics of the American polygraph association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating polygraph equipment.

(d) The license to give a polygraph, lie detector or similar test to employees or prospective employees shall be issued for a period of one year. It may be reissued from year to year.

(e) The commissioner of labor shall charge a fee of one hundred dollars for each issuance or reissuance of a license to give a polygraph, lie detector or similar

test to employees or prospective employees. Such fee shall be deposited in the general revenue fund of the State.

(f) The commissioner of labor shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-A, article three [§29A-3-1 et seq.] governing the administration of polygraph, lie detector or such similar test to employees. Such legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he may be licensed to give or interpret such polygraph, lie detector or similar test;

(2) Standards of accuracy which shall be met by machines or other devices to be used in polygraph, lie detector or similar tests; and

(3) The conditions under which a polygraph, lie detector or such similar test may be given.

**§21-5-5d. Penalties; cause of action.**

(a) It shall be a misdemeanor to administer or interpret a polygraph, lie detector or similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness to an employee or prospective employee without having received a valid and current license to do so as issued by the commissioner of labor or in violation of any rule or regulation promulgated by the commissioner under section five-c [§21-5-5c] of this article. Any person convicted of violating section five-c shall be fined not more than five hundred dollars.

(b) Any employer who violates section five-b [§21-5-5b] of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars.

(c) An employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b [§21-5-5b] of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.

**Wisconsin**

**Wisc.Stats.Ann. §111.37**

**111.37. Use of honesty testing devices in employment situations**

(1)(a) Except as provided in par. (b), no employer or agent of an employer may directly or indirectly solicit, require or administer a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test the honesty of any employee or prospective employee. No person may sell to or interpret for an employer or agent of an employer a test that he or she knows has been solicited or required by an employer or agent of an employer to

test the honesty of an employee or prospective employee. If an employee requests a test purporting to test the employee's honesty, any employer or agent administering the test shall inform the employee that taking the test is voluntary.

(b) This subsection does not apply to the use of an instrument or device for the purpose of verifying truthfulness or detecting deception, or assisting in the reporting of a diagnostic opinion as to either of these, which, at a minimum, is capable of recording visually, permanently and simultaneously indications of a person's cardiovascular pattern and changes therein and a person's respiratory pattern and changes therein.

(2) Any agreement by an employer or agent of the employer and an employee or prospective employee offering employment or any pay or job benefit to an employee or prospective employee in return for taking a test permitted under sub. (1)(b) is void.

(3)(a) If an employer or agent of an employer gives an employee or prospective employee a permitted test, the employer or agent shall follow the procedure under this subsection.

(b) The employer or agent shall inform the test subject, in writing and orally, of all rights which the subject has under this section and §§905.065 and 942.06. The employer or agent shall not proceed further with the test until the subject has provided written consent to take the test. The employer or agent shall conduct an interview prior to the test in which he or she discusses any questions to be asked of the subject.

(c) If a person is given a permitted test under par. (a), each question shall be directly related to the person's performance or conduct in past or present employment, shall be designed to establish a known false response for comparison purposes or shall be used to verify the truthfulness of answers on a written employment application. The employer or agent shall not ask any question during the test regarding the subject's sexual practices, religious affiliation or beliefs, marital relationship, political affiliation or beliefs or labor union activities.

(d) The employer or agent shall inform the subject of the results of the test and offer the subject the opportunity to explain any questionable responses or to retake the examination or both. If the subsequent responses or the reexamination clarify any questionable response, the results of the initial test question shall not be reported further.

(4) No employer may take any disciplinary action against or make a decision on hiring or firing an employee or prospective employee based on the results of a permitted test, unless the employer has relevant evidence or information, obtained independently from the permitted test, which tends to support the test results, or based on the refusal of the employee to take the test.

(5) Every act by a labor organization, employer, employment agency, licensing agency or other person performed in violation of this section is an act of "unfair honesty testing" and is prohibited.



## STATE LAWS: EXAMINERS

*Twenty-seven states have passed polygraph examiner licensing laws. Most of these laws either require the examiners to give the examinees certain information, or restrict the questions that may be asked in pre-employment examinations or both. Most often, these restrictions appear under the section of the law dealing with grounds for suspending, revoking, or refusing to issue a polygraph examiner's license. Text of these specific sections limiting examiners' authority follows, but it should be noted that the following is not complete text of polygraph examiner licensing laws.*

### Alabama

Code of Alabama, Professions and Businesses

Chapter 25, Polygraph Examiners

§34-25-32. Refusal, suspension or revocation — Grounds.

The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(1) Failing to inform a subject to be examined that his participation in the examination is voluntary;

(2) Failing to inform a subject to be examined as to the nature of the examination;

(3) Failing to inform the subject of the results of the examination if so requested;

(4) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

...

### Arizona

Arizona Rev.Stats., Professions and Occupations

Chapter 27, Polygraph Examiners

§32-2713. Grounds for refusal, suspension or revocation

The director may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

...

2. For failing to inform a subject to be examined of his right to refuse to participate in the examination.

3. For failing to inform a subject to be examined as to the nature of the examination.

4. For failing to offer an examinee a consent form prior to the application of instrument attachments to the body of the examinee.

5. For making inquiries during a private industry or business pre-employment examination regarding an applicant's religious, labor or political affiliation or sexual activities.

6. For making inquiries of a job applicant into a factor which might be considered in a manner which might violate title VII of the federal civil rights act of 1964, [42 USCA §2000e et seq.] or which might violate equal employment opportunities laws.

7. For failing to inform the subject of the results of the examination if so requested.

8. For willful disregard or violation of this chapter or any regulation or rule issued pursuant to this chapter, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes.

...

18. For willfully committing acts during the course of the administration of a polygraph examination that would alter the true results.

...

### Arkansas

Arkansas Stats.Ann., Occupations and Businesses

Chapter 22, Polygraph Examiners

§71-2217. Refusal, suspension, revocation — Grounds. — The board may refuse to issue or may suspend or revoke a license on any one [1] or more of the following grounds:

(1) for failing to inform a subject to be examined as to the nature of the examination;

(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

...

(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

...

(12) failing to inform the subject of the results of the examination if so requested.

...

### California

Deering's California Code, Businesses and Professions

Chapter 17.6 Polygraph Examiners

§9313. Grounds for denial or revocation; Investigation of alleged misconduct

(a) The director may refuse to issue or may revoke or suspend the license of any person as a polygraph examiner or intern on proof the person has done any of the following:

(1) Failed to inform an individual being examined as to the nature of the examination or failed to advise the

individual or his or her representative, or the representative of the requesting agency, of the results of the examination.

(2) Failed to inform an individual being examined that his or her participation in the examination is voluntary;

(4) Willfully disregarded or violated any provisions of this chapter or any regulation adopted pursuant thereto, including, but not limited to, the willful making of a false report of a polygraph examination.

**§9316. Disclosures required before conducting examination**

No examination shall be conducted or administered by a polygraph examiner unless the polygraph examiner makes known to the examinee each of the following:

(a) That the taking of the examination is a voluntary act on his or her part.

(b) That he or she may decline to take the examination and the declination shall not be construed to disadvantage him or her in any manner.

(c) The subject matter, or area of inquiry and the questions to be asked during the examination, which questions shall be read aloud prior to the instrumental examination. The person to be examined may be asked to sign a written statement acknowledging that the requirements of this section have been complied with by the polygraph examiner and may be asked to sign a written statement consenting to the disclosure of the examination results.

**Illinois**

**Illinois Stat. Ann., Professions and Occupations  
Detection of Deception Examiners**

**§2415.1. Prohibited subjects of inquiry**

§14.1 No Examiner shall inquire into any of the following areas during pre-employment or periodic employment examinations, unless the area is directly related to employment:

- (1) Religious beliefs or affiliations;
- (2) Beliefs or opinions regarding racial matters;
- (3) Political beliefs or affiliations;
- (4) Beliefs, affiliations or lawful activities regarding unions or labor organizations; or
- (5) Sexual preferences or activity.

**Louisiana**

**Louisiana Stats. Ann., Professions and Occupations  
Chapter 36-A. Polygraphists**

**§2848. Refusal, suspension, revocation; grounds**

The board may refuse to issue, or may suspend or revoke a certificate on any one or more of the following grounds:

(a) Failure to inform the person to be examined as to the nature of the examination.

(b) Failure to inform the person to be examined that his participation in the examination is voluntary, and that the refusal to submit to a polygraph shall not be an inference of guilt, nor shall it be cause or justification for termination of employment within the mean-

ing of any law relating to unemployment compensation.

**Maine**

**Maine Rev. Stats. Ann., Professions and Occupations  
Chapter 85, Polygraph Examiners  
§7154. Prohibitions**

It shall be unlawful for any polygraph examiner to probe the political or religious beliefs of any individual during any polygraph examination, except when the examination is conducted in the course of a criminal investigation conducted by law enforcement officials and the political or religious beliefs of the individual may be relevant to that investigation.

in which sexual behavior is at issue. This prohibition does not apply to polygraph examinations for applicants for positions in law enforcement agencies.

It shall be unlawful for any polygraph examiner to prove the political or religious beliefs of any individual during any polygraph examination, except when the examination is conducted in the course of a criminal investigation conducted by law enforcement officials and the political or religious beliefs of the individual may be relevant to that investigation.

It shall be unlawful for any polygraph examiner to subject a person to a polygraph examination without that person's full knowledge and consent.

**§7161. Refusal; suspension; revocation; grounds**

1. **Grounds.** The commissioner shall have the authority after a hearing in conformance with Title 5, section 9051 et seq., to refuse to issue or renew a license. The Administrative Court Judge shall have the power to suspend or revoke the license of any person licensed under this chapter. The commissioner may refuse to issue or renew a license and the Administrative Court may suspend or revoke a license on any one or more of the following grounds:

A. For failing to inform a subject to be examined as to the nature of the examination and of the specific questions to be asked;

B. For failing to inform a subject to be examined that his participation in the examination is voluntary; that he has the right to terminate an examination at any point without prejudice and that should he refuse or decline to submit to a polygraph examination, that the refusal or declination would not be the basis for any inference or act to his legal prejudice;

C. For failing to inform a person of his constitutional rights concerning self-incrimination under the 5th amendment of the Constitution of the United States when the polygraph examination is being conducted by or for a law enforcement agency or other entity when the person to be tested is suspected of criminal activity and where criminal charges could result should the person being examined make admissions against interest;

D. For asking a person being examined on the polygraph questions concerning sexual behavior except as provided for in section 7154;

E. For failing to discuss any reactions with the person being examined on the polygraph which could



## STATE LAWS: EXAMINERS

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be indicative of deception and not providing the person an opportunity to offer explanations for the responses;

F. For failing to inform a person examined by polygraph of the results of the examination if so requested;

G. For conducting a polygraph examination of a person when he has reason to believe the examination is intended to interfere with or prevent the lawful organizational activities of a labor union;

I. For willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

**Michigan**

Michigan Comp.Laws Ann., Professions and Occupations

**Polygraph Examiners**

§338.1719 Suspension or revocation of licenses, grounds

Sec. 19. The board may suspend or revoke any license on any 1 or more of the following grounds:

(e) Having demonstrated unworthiness or incompetency to act as an examiner or intern in such manner as to affect the interests of the public.

(j) Asking test questions during a polygraph examination regarding the examinee's sexual practices, labor union, political or religious affiliations or his marital relationship, except where such questions have a bearing on the areas or issues under examination.

(k) Failing to inform the examinee of all specific question areas to be explored prior to their actual exploration during the examination.

(l) Conducting an examination without having informed the examinee of the following:

(i) He has the right to refuse or accept the examination.

(ii) He cannot be discharged from employment solely because he so refuses or accepts.

(iii) He has the right to halt an examination in progress at any time.

(iv) He is not required to answer any questions or give any information.

(v) Any information he volunteers could be used against him, or made available to the party requesting the examination, unless otherwise specified and agreed to in writing.

§338.1726a. Administration of polygraph examinations, lie detector tests, psychological stress evaluations, or similar tests; violations, punishment, damages

Sec. 26a. (1) An examiner or intern shall not administer a polygraph examination, lie detector test, psychological stress evaluation, or similar test to an employee or applicant for employment that violates

the polygraph protection act of 1981. [Sections 37.201 to 37.209].

(2) An examiner or intern who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 90 days, or both.

(3) An examiner or intern who violates this section may be liable to the employee or applicant for employment for damages and for costs and statutory attorney fees.

**Mississippi**

Mississippi Code Ann., Professions and Vocations  
Chapter 29, Polygraph Examiners

§73-29-31. Grounds for refusal to issue or renew license, or for revocation or suspension.

The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(1) For failing to inform a subject to be examined as to the nature of the examination;

(2) For failing to inform a subject to be examined that his participation in the examination is voluntary;

(4) Wilful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(12) Failing to inform the subject of the results of the examination if so requested; or

(13) With regard to any polygraph examiner employed for a fee and not employed by a governmental law enforcement agency or the Mississippi Department of Corrections:

(a) Requiring a subject, prior to taking the examination or as a condition of receiving the results of the examination, to waive any rights or causes of action he may have or which may accrue in favor of the subject arising out of or resulting from the administration of the examination; except the examiner may require, prior to the examination or as a condition of receiving the results of the examination, a subject to waive any rights or causes of action that may accrue against the examiner as a result of any use made of the results of the examination by the person who employed the examiner.

(b) Requiring a subject to acknowledge that his examination is not done for purposes of employment when, in fact, the results of the examination are to be submitted to an employer or an agent of an employer;

**Montana**

Montana Code Ann., Professions and Occupations  
Chapter 62, Polygraph Examiners

§37-62-212. Suspension and revocation. An examiner's license may be suspended for a fixed period or may be revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:



(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

### **Nevada**

Nevada Rev.Stats.

#### **Chapter 648A, Polygraph Examiners**

§648A.170 Disciplinary action: Grounds. The board may refuse to issue or renew a license or certificate or may suspend or revoke a license or certificate if the examiner:

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2. Has willfully made a false report of the results of a polygraphic examination.

3. Has accepted a fee contingent upon the outcome of a polygraphic examination.

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648A.190 Polygraphic examination must meet minimum standards of chapter before opinion may be considered or accepted into evidence. In a decision which affects the well-being, employment or liability of any person, another person or governmental body or agency in this state shall not consider or accept into evidence an opinion resulting from a polygraphic examination which does not meet the minimum standards established by this chapter.

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648A.210 Requirements for conducting examination: Examinee must be advised of right to refuse to answer incriminating or degrading question. Except in the case of an investigation of its own affairs conducted by a police or investigative agency of the state, at the beginning of any polygraphic examination, the examiner shall advise the examinee that he has the right to refuse to answer any question if his answer would tend to incriminate him or degrade him.

648A.220 Requirements for conducting examination: Explanation of purpose; consent; prohibited purposes. A polygraphic examination must not be conducted:

1. Unless the examinee is advised of the purpose of the examination;

2. Unless the examinee consents to it in writing;

3. For the purpose of interfering with or preventing lawful activities of organized labor; ...

\*\*\*

648A.230 Requirements for conducting examination: Technique. In conducting a polygraphic examination, an examiner shall use only standard and widely

accepted techniques based on comparison and measurements of peaks of tension. All questions used during the examination must be reviewed with the examinee before being used. ...

648A.240 Requirements for conducting examination: Inquiries into examinee's religious, political, labor affiliations or sexual activities prohibited; exception. During a polygraphic examination, the examiner shall not make inquiries into the examinee's religion or his political affiliations or affiliations with labor organizations, or an examinee's sexual activities, unless his religion or those affiliations or activities are germane to the issue under investigation and the inquiries are made at the request of the examinee.

648A.250 Opinion of examiner.

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2. An examiner shall not render an opinion based upon analysis of polygraphic charts without affording the examinee an opportunity to explain any physiological effects recorded on those charts which indicate deception on the part of the examinee.

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### **New Mexico**

New Mexico Rev.Stats., Professional and Occupational Licenses

#### **Article 26, Polygraphers**

§61-26-9. Refusal to license; suspension and revocation.

The office [of the state attorney general] may, in accordance with the provisions of the Uniform Licensing Act [6-1-1 to 61-1-31 NMSA 1978], refuse to issue a license, or to suspend or revoke a license already issued when the applicant or licensee is found to:

\*\*\*

G. have asked any question during the course of a polygraph examination relative to the sexual affairs of an examinee, his race, creed, religion, union affiliation or activity, not previously and specifically agreed to by written consent.

### **Oklahoma**

Oklahoma Stats.Ann., Professions and Occupations

#### **Chapter 36.—Polygraph Examiners Act**

##### **§1468. Suspension or revocation of license**

The Board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

1. For failing to inform a subject to be examined as to the nature of the examination;

2. For failing to inform a subject to be examined that his participation in the examination is voluntary;

\*\*\*

4. Willful disregard or violation of this act or any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

\*\*\*

12. Failing to inform the subject of the results of the examination if so requested.

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### **Oregon**

#### **Oregon Rev.Stats., Occupations and Professions Chapter 703, Polygraph Examiners**

§703.210 Suspension, revocation or issuance refusal; conditions. The board may refuse to issue, or may revoke or suspend the license of any person as a polygraph examiner or trainee, if it finds that the person:

(1) Failed to inform an individual being examined as to the nature of the examination or failed to advise the individual or his representative of the results of the examination;

(2) Failed to inform an individual being examined that his participation in the examination is voluntary;

(4) Wilfully disregarded or violated any provision of ORS 703.010 and 703.030 to 703.320 or any rule adopted pursuant thereto, including but not limited to the wilful making of a false report of a polygraph examination;

### **South Carolina**

#### **Code of Laws of South Carolina Ann.; Professions and Occupations**

##### **Chapter 53, Polygraph Examiners**

§40-53-180. Grounds for refusal to issue, suspension or revocation of license.

The Division may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(a) Failing to inform a subject to be examined as to the nature of the examination;

(b) Failing to inform a subject to be examined that his participation in the examination is voluntary;

(d) Wilful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(1) Failing to inform the subject of the results of the examination if so requested.

### **Tennessee**

#### **Tennessee Code Ann., Professions, Businesses and Trades**

##### **Chapter 27, Polygraph Examiners**

§62-27-117. Grounds for license refusal, revocation, or suspension. — The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(1) For failing to inform a subject to be examined as to the nature of the examination;

(2) For failing to inform a subject to be examined that his participation in the examination is voluntary;

(4) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false

or misleading report (oral included) concerning an examination for polygraph examination purposes;

(6) Making any willful misrepresentation or false promises to the person being examined ...

(12) Failing to inform the subject of the results of the examination upon written request;

§62-27-123. Misdemeanors. — (a) It shall be unlawful for any person to:

(2) Include any question concerning a subject's sexual behavior or orientation in a polygraph examination, unless such matter is relevant to the examination. Before proceeding with such examination, the examiner must obtain the subject's written permission; and such permission shall be made a part of the test record; and

(3) Conclude a polygraph examination without affording the subject a reasonable opportunity to explain any deceptive reactions to relevant questions which are evident on the charts.

Any violation of this subsection (a) shall be a misdemeanor, and shall be punishable as provided in §39-1-202.

### **Texas**

#### **Texas Civ.Stats.Ann., Chapter 5, Department of Public Safety**

##### **Article 4413(29cc). Polygraph Examiners Act**

**Refusal, probation, reprimand, suspension, revocation—grounds**

Sec. 19. The board shall refuse to issue a license, shall revoke or suspend a license, shall reprimand a licensee, or may probate a license suspension on any one or more of the following grounds:

(1) for failing to inform a subject to be examined as to the nature of the examination;

(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(12) failing to inform the subject of the results of the examination if so requested; ...

### **Utah**

#### **Utah Code Ann., Labor In General**

##### **Chapter 37, Deception Detection Examiners**

§34-37-10. Investigation of complaints by department — Grounds for suspension or revocation of license. The department upon its own motion or upon the written verified complaint of any person, shall investigate or cause to be investigated the actions of

any examiner or intern, or any person who shall assume to act as such within this state and may suspend or revoke any license issued under this chapter at any time where the licensee has by false or fraudulent representation obtained a license or where the licensee is found to be guilty of any dishonest conduct, incompetency or misconduct that discredits the profession.  
\* \* \*

§34-37-16. **Surreptitious examinations prohibited.** It shall be a violation of this act to conduct a deception detection examination by instrument without the physical presence of the subject and through a surreptitious manner where a subject is not aware of the examination. Furthermore, it shall be unlawful for: (1) any deception examination to be conducted by instrument by out-of-state examiners through telephonic means to anyone in Utah or for Utah examiners to use telephonic means to determine truth or deception; or (2) refusal to submit to such examination to be the basis for denying or terminating employment.

### *Vermont*

#### Vermont Stats. Ann., Professions and Occupations Chapter 53. Polygraph Examiners

##### §2908. Refusal, suspension, revocation

The commissioner may, pursuant to chapter 25 of Title 3, refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(1) Failure to inform a subject to be examined as to the nature of the examination;

(2) Failure to inform a subject to be examined that his participation in the examination is voluntary;  
\* \* \*

(3) Wilful disregard or violation of this chapter or of any regulation or rule issued hereunder, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;  
\* \* \*

(12) Failing to inform the subject of the results of the examination if so requested.  
\* \* \*

U.S. Department of Justice



Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

11 MAR 1986

Honorable Thomas P. O'Neill, Jr.  
The Speaker  
U.S. House of Representatives  
Washington, D. C. 20515

Dear Mr. Speaker:

After careful review of H.R. 1524 and its companion bill in the Senate, S. 1815, the Department of Justice has concluded that enactment of this legislation, even with the changes previously suggested by the Administration, would usurp private-sector decisionmaking and is contrary to principles of federalism. Therefore, the Department urges the House to reject H.R. 1524 when it is brought to the floor for a vote.

We know of no compelling reason why the federal government, or any level of government, should preclude private employers from using polygraphs. This Administration firmly believes that the terms and conditions of private employment, to the maximum extent possible, should be decided in the private marketplace. Government should not challenge an employer's judgments on the credibility of employees or prospective employees, however determined, absent some proof of impermissible discrimination. Even H.R. 1524, by its exemptions for drug theft or diversion, recognizes that polygraphs serve a useful purpose for some employers.

Moreover, important principles of federalism mandate that we do not intervene in matters that have traditionally been the responsibility of the states, and in which there is no overriding need for national policy uniformity. On the contrary, given that the scientific and legal boundaries of the polygraph issue are in a state of flux, it appears to be an appropriate area in which to allow the states to experiment with their own approach to any perceived problems. Nearly half the states have enacted laws regulating polygraphs, thus demonstrating the clear ability of states to handle this issue. Moreover, polygraph use is well outside of the traditional bounds of controversies related to terms and conditions of employment, an area largely preempted by the federal government.

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Although referred to as a 'lie detector,' the polygraph itself does not detect lies. The polygraph is an instrument that measures a variety of physiological responses of an individual undergoing questioning. These measurements assist an examiner in forming an opinion as to whether the individual has given truthful or deceptive answers to particular questions.

Numerous scientific studies have attempted to quantify the accuracy of polygraph examinations. Because there are differences in the skills of particular polygraph examiners, and in the types of inquiries they are asked to undertake, the results of the studies have varied. The overwhelming majority of studies, however, show accuracy rates for polygraph examinations within the range of 70 to 95 percent. These results reflect a clear scientific consensus that the polygraph can produce statistically significant indications of deception and non-deception. In fact, the polygraph has long been used to good effect as an investigative tool by the federal government. Consequently, the Justice Department has traditionally supported the use of the polygraph as an adjunct to the normal interview and interrogation process in certain kinds of matters within its investigative jurisdiction.

. . .with proper ethics by the polygraph examiner and tight administrative control by the user agency, there is no question but that the polygraph can be a valuable investigative aid to supplement interrogation in selected criminal and national security cases. Interrogation is a basic tool of any investigative agency and the FBI considers the polygraph technique a thorough and specialized interview procedure in which a skillful interrogator is attempting to simply ascertain the truthful facts from a consenting individual regarding a matter in which we have jurisdiction.

In some instances suspects will admit deception and furnish confession and or signed statements. In most instances valuable new information or investigative or investigative direction is developed as a result of the examination and followup interrogation.\_/

The Justice Department, however, has opposed the use of polygraph examination results in criminal trials as evidence of guilt or innocence for several reasons. First, a defendant could seek out "friendly" examiners, taking several tests until he

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\_/ Statement of Bell P. Herndon, Supervisory Special Agent, FBI. The Use of Polygraphs and Similar Devices by Federal Agencies, Hearings Before the House Committee on Government Operations, 93rd Cong., 2d Sess. (1974) at p. 419.

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passed one and then seek to use that favorable result as evidence of innocence. Because of Fifth Amendment considerations, the prosecutor could not obtain the other examinations without the consent of the accused. Second, there is a substantial likelihood that the jury would give undue weight to polygraph results, ultimately displacing its own role as trier of guilt or innocence. Finally, attempts to introduce polygraph evidence could greatly increase the length of criminal trials in order to accommodate the necessary expert testimony. None of these considerations apply when the polygraph is used as a screening or investigative tool.

Polygraph misuse may be more appropriately deterred by restricting the conditions under which polygraphs are administered rather than prohibiting their use altogether. The states are better equipped to make those determinations. For example, Wisconsin provides procedures for the appeal of allegedly unfair testing and carefully controls the disclosure of results. Other states prohibit examiners from asking certain classes of questions, such as those dealing with political beliefs or sexual practices. Finally, many states require that polygraphs be administered only by licensed examiners.

Because the polygraph can frequently provide accurate information about a person's veracity, the federal government should not prohibit its use by non-government employers. Again, rather than a flat nationwide ban on polygraph use, the uses of, and safeguards surrounding, polygraph use should be resolved on a case-by-case, state-by-state basis to permit maximum flexibility. There are a wide variety of private-sector jobs that may require employers to take appropriate security precautions to insure against theft or industrial espionage. Certainly, stringent security precautions may be necessary for employees who work in jobs affecting public health and safety, e.g., technicians at nuclear power plants, airline pilots or those who work with narcotics and dangerous drugs. Moreover, we should not be indifferent to the plight of other employers, such as retailers who want to take prudent steps to ensure that their inventory does not disappear at the hands of their own employees.

Given the benefits of polygraph use and the ability of the states to protect adequately against any polygraph misuse, a nationwide ban on polygraph use is inappropriate. Consequently, the Justice Department opposes H.R. 1524.

- 3 -

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The Office of Management and Budget advises us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Bolton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John R. Bolton  
Assistant Attorney General

cc. Honorable Orrin G Hatch  
United States Senator